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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,381	02/11/2004	Robert G. Bridges		4601

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EXAMINER

DINH, TAN X

ART UNIT	PAPER NUMBER
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2627

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/777,381	Applicant(s) BRIDGES, ROBERT G.	
	Examiner TAN X. DINH	Art Unit 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1) A Request for Continued Examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/28/2010 has been entered.

2) The amendment/preliminary amendment filed 2/28/2010 is acknowledged. Claims 1-31 have been canceled. New claims 32-50 are currently added.

3) Claims 32-50 are questionable. The words with capital letter, such as " Media File ", " Collection ", " Control Program ", etc., in the claims imply another meaning or for another special purpose ?.

4) Claims 32-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase " such control program " (claim 32) is unclear and cannot be understood. Where is this " such control program " come from ?.

The same rejection is applied to the phrase " song bundle " and "media files".

Claim(s) 33-49 incorporate the indefiniteness of claim(s) 32 by virtue of their dependency thereon.

5) Claims 32-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure fails to teaches the feature of applying a software program to the device as now claimed in claims 32 and 50. This feature is consider as new matter.

The original disclosure fails to teaches the feature of claim 36 and claims 39-44. There is no server or Internet have been introduced in the original disclosure, therefore, This feature is consider as new matter. Further, the original disclosure fails to teaches the feature of claims 35,45,48 and 49.

6) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Art Unit: 2627

7) (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8) Claims *32-34,36-44 and 50* are rejected under 35 U.S.C. 102(e) as being anticipated by **ALFERNES (7,078,607)**.

ALFERNES discloses a method for enhancing playback of one or more pre-recorded audio or video performances of a composition, as claimed in claim 32, comprising the steps of:

retrieving two or more media files from storage (Fig.4, the tracks are stored on CD or DVD are retrieved at recording studio);

compiling two or more pre-recorded Media Files into a Collection (column 3, lines 35-46. In this case, each song is capable of mixing in 20 difference ways of guitar solos, after mixing the songs have a new version which is complete songs);

applying a software program to Collection, such Control Program linking one or more conditional requirements to at least one Media File in the Collection (Fig.7, step 725, the software using on this device is used to create script);

Restricting playback of at least one Media File until one or more of the conditional requirements associated with such Media File

in the Control Program have been met (Fig.7, the playback is restricted based on the scripts).

As to claims 33 and 34, ALFERNES shows compiling media files that store different performances of the same song (Fig.5, different sound file formats).

As to claims 36 and 37, ALFERNES shows the conditions requirements are based on current calendar date or current time of the day (Fig.5, the conditions are shown on the sound files include date create (calendar date) and date modified (current time of day)).

As to claim 38, ALFERNES shows the step of generating control track for embedding one or more conditions requirements for use during playback (Fig.7, the script contains playback conditions).

As to claim 40, ALFERNES shows retrieving media files from DVD (Fig.2, DVD-ROM drive 226).

As to claims 39,41-44, ALFERNES shows the condition require accessing server on the Internet (Figure 1, LAN, Fig.3, www.browser 314, network interface 302, figure 4, server).

Claim 50 is rejected with the same reasons set forth in claim 32 above.

9) The following is a quotation of 35 U.S.C. 103(a) which

Art Unit: 2627

forms the basis for all obviousness rejections set forth in this

Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10) Claims *35 and 45-49* are rejected under 35 U.S.C. 103(a) as being unpatentable over **ALFERNES (7,078,607)**.

ALFERNES discloses all the subject matter as claimed in claims 35 and 45, *except to specifically show that* the device is restricted until at least one media file has been played. However, the feature is easily achieve by someone within the level of skill in the art by setting this condition using available software program.

As to claims 46-48, ALFERNES shows media files are video files (Fig.2, DVD-ROM drive 226).

Claim 49 is rejected with the same reasons set forth in claims 34 and 45 above.

11) Applicant's arguments with respect to claims 32-50 have been considered but are moot in view of the new ground(s) of rejection.

12) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Form **PTO-892** is attached herein.

13) Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TAN X. DINH** whose telephone number is **(571)272-7586**. The examiner can normally be reached on **MONDAY to FRIDAY** from **9:00AM** to **5:00PM**.

The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the **Patent Application Information Retrieval (PAIR)** system. Status information for published applications may be obtained from either **Private PAIR** or **Public PAIR**. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the **Private PAIR** system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

/TAN Xuan DINH/
Primary Examiner, Art Unit 2627
March 14, 2010